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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CYNTHIA BRIONES and MAURICE
BRIONES, in each case individually
and as a successor in interest to Kyle
Briones, deceased,

Plaintiffs,

vs.

CITY OF ONTARIO; STAFFORD
CROSS, MIKE GONZALEZ,
MICHAEL MORA, DARRYL
BROWN, KYLE MORGAN and DOES
6-10, inclusive,

Defendants.

Case No. 5:17-cv-00590-DMG-JPR

**SECOND AMENDED
COMPLAINT FOR DAMAGES**

1. Unreasonable Search and
Seizure—Detention and Arrest (42
U.S.C. § 1983)
2. Unreasonable Search and
Seizure—Excessive Force (42
U.S.C. § 1983)
3. Unreasonable Search and
Seizure—Denial of Medical Care
(42 U.S.C. § 1983)
4. Due Process—Interference with
Familial Relationship (42 U.S.C. §
1983)
5. Municipal Liability – Ratification
(42 U.S.C. § 1983)
6. Municipal Liability – Inadequate
Training (42 U.S.C. § 1983)
7. Municipal Liability –
Unconstitutional Custom, Practice,
or Policy (42 U.S.C. § 1983)
8. False Arrest/False Imprisonment
9. Battery (wrongful death)
10. Negligence (wrongful death)
11. Violation of Cal. Civil Code 52.1

DEMAND FOR JURY TRIAL

1 **SECOND AMENDED COMPLAINT FOR DAMAGES**

2 COME NOW, Plaintiffs Cynthia Briones and Maurice Briones, in each case
3 individually and as a successor in interest to Kyle Briones, deceased, for their
4 Complaint against Defendants City of Ontario, Stafford Cross, Mike Gonzalez,
5 Michael Mora, Darryl Brown, Kyle Morgan and DOES 6-10, inclusive, and allege
6 as follows:

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
9 and 1343(a)(3)-(4) because Plaintiffs assert claims arising under the laws of the
10 United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth
11 Amendments of the United States Constitution.

12 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because
13 Defendants reside in this district and all incidents, events, and occurrences giving
14 rise to this action occurred in this district.

15
16 **INTRODUCTION**

17 3. This civil rights and state tort action seeks compensatory and punitive
18 damages from Defendants for violating various rights under the United States
19 Constitution in connection with the fatal officer-involved death of Plaintiffs' son,
20 Kyle Briones ("DECEDENT"), on October 5, 2016.

21
22 **PARTIES**

23 4. At all relevant times, Decedent Kyle Briones was an individual residing
24 in the City of Ontario, California.

25 5. Plaintiff CYNTHIA BRIONES is an individual residing in the City of
26 Ontario, California, and is the natural mother of DECEDENT. CYNTHIA
27 BRIONES sues both in her individual capacity as the mother of DECEDENT and in
28 a representative capacity as a successor-in-interest to DECEDENT pursuant to

1 California Code of Civil Procedure § 377.60. CYNTHIA BRIONES seeks both
2 survival and wrongful death damages under federal law.

3 6. Plaintiff MAURICE BRIONES is an individual residing in the City of
4 Ontario, California, and is the natural father of DECEDENT. MAURICE BRIONES
5 sues both in his individual capacity as the father of DECEDENT and in a
6 representative capacity as a successor-in-interest to DECEDENT pursuant to
7 California Code of Civil Procedure § 377.60. MAURICE BRIONES seeks both
8 survival and wrongful death damages under federal law.

9 7. At all relevant times, Defendant CITY OF ONTARIO (“CITY”) is and
10 was a duly organized public entity, form unknown, existing under the laws of the
11 State of California. CITY is a chartered subdivision of the State of California with
12 the capacity to be sued. CITY is responsible for the actions, omissions, policies,
13 procedures, practices, and customs of its various agents and agencies, including the
14 City of Ontario Police Department and its agents and employees. At all relevant
15 times, Defendant CITY was responsible for assuring that the actions, omissions,
16 policies, procedures, practices, and customs of the City of Ontario Police
17 Department and its employees and agents complied with the laws of the United
18 States and of the State of California. At all relevant times, CITY was the employer
19 of Defendants DOES 6-10.

20 8. Defendants Stafford Cross, Mike Gonzalez, Michael Mora, Darryl
21 Brown, and Kyle Morgan (“the OFFICER DEFENDANTS”) are police officers
22 and/or sergeants working for the City of Ontario Police Department. The officer
23 defendants were acting under color of law within the course and scope of their
24 duties as officers for the City of Ontario Police Department. At all relevant times,
25 the officer defendants were acting with the complete authority and ratification of
26 their principal, Defendant CITY.

27 9. Defendants DOES 6-8 are supervisory officers for the City of Ontario
28 Police Department who were acting under color of law within the course and scope

1 of their duties as police officers for the City of Ontario Police Department. DOES
2 6-8 were acting with the complete authority and ratification of their principal,
3 Defendant CITY.

4 10. Defendants DOES 9-10 are managerial, supervisory, and
5 policymaking employees of the City of Ontario Police Department, who were acting
6 under color of law within the course and scope of their duties as managerial,
7 supervisory, and policymaking employees for the City of Ontario Police
8 Department. DOES 9-10 were acting with the complete authority and ratification of
9 their principal, Defendant CITY.

10 11. On information and belief, DOES 6-10 were residents of the County of
11 San Bernardino, California.

12 12. In doing the acts and failing and omitting to act as hereinafter
13 described, the officer defendants were acting on the implied and actual permission
14 and consent of Defendants DOES 6-10.

15 13. In doing the acts and failing and omitting to act as hereinafter
16 described, Defendants DOES 6-10 were acting on the implied and actual permission
17 and consent of the CITY.

18 14. The true names and capacities, whether individual, corporate,
19 association or otherwise of Defendants DOES 6-10, inclusive, are unknown to
20 Plaintiffs, who otherwise sue these Defendants by such fictitious names. Plaintiffs
21 will seek leave to amend this complaint to show the true names and capacity of
22 these Defendants when they have been ascertained. Each of the fictitiously-named
23 Defendants is responsible in some manner for the conduct or liabilities alleged
24 herein.

25 15. DOES 6-10 are sued in their individual capacity.

26 16. At all times mentioned herein, each and every defendant was the agent
27 of each and every other defendant and had the legal duty to oversee and supervise
28 the hiring, conduct, and employment of each and every defendant.

1 17. All of the acts complained of herein by Plaintiffs against Defendants
2 were done and performed by said Defendants by and through their authorized
3 agents, servants, and/or employees, all of whom at all relevant times herein were
4 acting within the course, purpose, and scope of said agency, service, and/or
5 employment capacity. Moreover, Defendants and their agents ratified (or will
6 ratify) all of the acts complained of herein.

7 18. On December 28, 2016, Plaintiffs filed a comprehensive and timely
8 claim for damages with the City of Ontario pursuant to applicable sections of the
9 California Government Code.

10 19. On February 10, 2017, the City of Ontario denied Plaintiffs' claims.
11

12 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

13 20. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
14 through 19 of this Complaint with the same force and effect as if fully set forth
15 herein.

16 21. On October 5, 2016, at approximately 1:15 a.m., DECEDENT was
17 involved in a single-vehicle collision near the intersection of Archibald Avenue and
18 Ontario Ranch Road, in the City of Ontario, California. Plaintiffs believe the
19 collision was occurred when a tire on DECEDENT's vehicle blew out. A civilian
20 motorist observed DECEDENT's disabled vehicle and called 9-1-1. The OFFICER
21 DEFENDANTS responded to the call and DECEDENT exited the vehicle with
22 assistance. Rather than addressing DECEDENT's injuries, the OFFICER
23 DEFENDANTS forced DECEDENT into a prone position on the ground and
24 restrained DECEDENT. Additional OFFICER DEFENDANTS arrived on scene
25 and assisted with the efforts to restrain and handcuff DECEDENT. In the process,
26 the OFFICER DEFENDANTS placed pressure on DECEDENT's back and stood
27 and knelt on the backs of DECEDENT's legs. The OFFICER DEFENDANTS also
28 deployed a Taser to DECEDENT's back. The OFFICER DEFENDANTS cuffed

1 DECEDENT's wrists and hobbled his ankles with a TARP restraint while
2 DECEDENT was face and chest down. The OFFICER DEFENDANTS held
3 DECEDENT face and chest down, restrained in a prone position, for an extended
4 period of time.

5 22. After the OFFICER DEFENDANTS cuffed DECEDENT's wrists and
6 hobbled his legs, and while DECEDENT was still prone, DECEDENT became
7 quiet, still, and unresponsive. Paramedics arrived, administered CPR, and then
8 transported DECEDENT to Kaiser Hospital, where DECEDENT was pronounced
9 dead.

10 23. After single-vehicle collision, in which Plaintiffs believe
11 DECEDENT's vehicle struck the street sign as a result of the tire blowing out,
12 DECEDENT was groaning from pain and in obvious and critical need of emergency
13 medical care and treatment. However, rather than treating DECEDENT
14 immediately or calling for medical personnel to treat his injuries that resulted from
15 the vehicle collision, the OFFICER DEFENDANTS forced DECEDENT into a
16 prone position. The OFFICER DEFENDANTS did not timely summon medical
17 care, nor did the OFFICER DEFENDANTS permit medical personnel to treat
18 DECEDENT without delay after the paramedics arrived on scene. The delay of
19 medical care to DECEDENT caused DECEDENT extreme physical and emotional
20 pain and suffering, and was a contributing cause of DECEDENT's death.

21 24. The use of force against DECEDENT was excessive and objectively
22 unreasonable under the circumstances, especially because DECEDENT did not pose
23 an immediate threat of death or serious bodily injury to anyone at all relevant times,
24 including the OFFICER DEFENDANTS.

25 25. Plaintiff CYNTHIA BRIONES is DECEDENT's successor-in-interest
26 as defined in Section 377.11 and succeeds to DECEDENT's interest in this action as
27 the natural mother of DECEDENT.

28

FIRST CLAIM FOR RELIEF

(Against the OFFICER DEFENDANTS)

11 28. The OFFICER DEFENDANTS detained DECEDENT without
12 reasonable suspicion and arrested him without probable cause.

30. The conduct of the OFFICER DEFENDANTS was willful, wanton,
malicious, and done with reckless disregard for the rights and safety of
DECEDENT, and therefore warrants the imposition of exemplary and punitive
damages as to the OFFICER DEFENDANTS.

31. This unreasonable detention, arrest, and restraint caused Plaintiffs' and DECEDENT's injuries. As a result of their misconduct, Defendants the OFFICER DEFENDANTS are liable for DECEDENT's injuries, either because they were integral participants in the wrongful detention and arrest, or because they failed to intervene to prevent these violations.

32. Plaintiffs bring this claim as successors-in-interest to DECEDENT, and seek both survival and wrongful death damages for the violation of DECEDENT's

1 rights. Plaintiffs also seek funeral and burial expenses and attorney's fees under this
2 claim.

4 **SECOND CLAIM FOR RELIEF**

5 **Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)**

6 (Against the OFFICER DEFENDANTS)

7 33. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
8 through 32 of this Complaint with the same force and effect as if fully set forth
9 herein.

10 34. The OFFICER DEFENDANTS forced DECEDENT into a prone
11 position on the ground and attempted to handcuff DECEDENT. Additional
12 OFFICER DEFENDANTS arrived on scene and assisted with the efforts to
13 handcuff DECEDENT. In the process, the OFFICER DEFENDANTS placed
14 pressure on DECEDENT's back and stood and knelt on the back of DECEDENT's
15 thighs. The OFFICER DEFENDANTS proceeded to use Tasers on DECEDENT.
16 After using Tasers on DECEDENT, the OFFICER DEFENDANTS cuffed
17 DECEDENT's wrists and applied a hobble to his ankles. DECEDENT was held
18 down in a prone position for an extended period of time. This, along with other
19 undiscovered uses of force against DECEDENT, constitutes unreasonable and
20 excessive force.

21 35. The OFFICER DEFENDANTS' unjustified use of force, in particular,
22 the unreasonable restraint, deprived DECEDENT of his right to be secure in his
23 person against unreasonable searches and seizures as guaranteed to DECEDENT
24 under the Fourth Amendment to the United States Constitution and applied to state
25 actors by the Fourteenth Amendment.

26 36. As a result of the foregoing, DECEDENT suffered great physical pain
27 and emotional distress up to the time of his death, loss of enjoyment of life, loss of
28 life, and loss of earning capacity.

1 forced DECEDENT into a prone position. After DECEDENT lost consciousness
2 following the restraint wherein the OFFICER DEFENDANTS placed pressure on
3 DECEDENT's backside, the OFFICER DEFENDANTS did not timely summon
4 medical care or permit medical personnel to treat DECEDENT. The delay of
5 medical care to DECEDENT caused DECEDENT extreme physical and emotional
6 pain and suffering, and was a contributing cause of DECEDENT's death.

7 44. The denial of medical care by the OFFICER DEFENDANTS deprived
8 DECEDENT of his right to be secure in his person against unreasonable searches
9 and seizures as guaranteed to DECEDENT under the Fourth Amendment to the
10 United States Constitution and applied to state actors by the Fourteenth Amendment.

11 45. As a result of the foregoing, DECEDENT suffered great physical pain
12 and emotional distress up to the time of his death, and also suffered loss of
13 enjoyment of life, loss of life, and loss of earning capacity.

14 46. The OFFICER DEFENDANTS knew that failure to provide timely
15 medical treatment to DECEDENT could result in further significant injury or the
16 unnecessary and wanton infliction of pain, but disregarded that serious medical
17 need, causing DECEDENT great bodily harm and death.

18 47. The conduct of the OFFICER DEFENDANTS was willful, wanton,
19 malicious, and done with reckless disregard for the rights and safety of DECEDENT
20 and therefore warrants the imposition of exemplary and punitive damages as to the
21 OFFICER DEFENDANTS.

22 48. As a result of their misconduct, the OFFICER DEFENDANTS are
23 liable for DECEDENT's injuries, either because they were integral participants in
24 the denial of medical care, or because they failed to intervene to prevent these
25 violations.

26 49. Plaintiffs bring this claim as successors-in-interest to DECEDENT, and
27 seek both survival and wrongful death damages for the violation of DECEDENT's
28

1 rights. Plaintiffs also seek funeral and burial expenses and attorney's fees under this
2 claim.

3
4 **FOURTH CLAIM FOR RELIEF**

5 **Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)**

6 (Against the OFFICER DEFENDANTS)

7 50. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
8 through 49 of this Complaint with the same force and effect as if fully set forth
9 herein.

10 51. DECEDENT had a cognizable interest under the Due Process Clause of
11 the Fourteenth Amendment of the United States Constitution to be free from state
12 actions that deprive him of life, liberty, or property in such a manner as to shock the
13 conscience, including but not limited to unwarranted state interference in
14 DECEDENT's familial relationships.

15 52. Plaintiffs had a cognizable interest under the Due Process Clause of the
16 Fourteenth Amendment of the United States Constitution to be free from state
17 actions that deprive them of life, liberty, or property in such a manner as to shock
18 the conscience, including but not limited to unwarranted state interference in
19 Plaintiffs' familial relationship with their son, DECEDENT.

20 53. The aforementioned actions of the OFFICER DEFENDANTS, along
21 with other undiscovered conduct, shock the conscience, in that they acted with
22 deliberate indifference to the constitutional rights of DECEDENT and Plaintiffs, and
23 with purpose to harm unrelated to any legitimate law enforcement objective.

24 54. The OFFICER DEFENDANTS thus violated the substantive due
25 process rights of Plaintiffs to be free from unwarranted interference with their
26 familial relationship with DECEDENT, their son.

27 55. As a direct and proximate cause of the acts of the OFFICER
28 DEFENDANTS, Plaintiffs have suffered emotional distress, mental anguish, and

1 pain. Plaintiffs have also been deprived of the life-long love, companionship,
 2 comfort, support, guidance society, care, and sustenance of DECEDENT, and will
 3 continue to be so deprived for the remainder of their natural lives.

4 56. The conduct of the OFFICER DEFENDANTS was willful, wanton,
 5 malicious, and done with reckless disregard for the rights and safety of DECEDENT
 6 and Plaintiffs and therefore warrants the imposition of exemplary and punitive
 7 damages as to the OFFICER DEFENDANTS, either because they were integral
 8 participants or because they failed to intervene to prevent these violations.

9 57. Plaintiffs seek wrongful death damages under this claim in their
 10 individual capacities and also seek survival damages for the violation of
 11 DECEDENT's due process right. Plaintiffs also seek funeral and burial expenses
 12 and attorney's fees under this claim.

13 14 **FIFTH CLAIM FOR RELIEF**

15 **Municipal Liability – Ratification (42 U.S.C. § 1983)**

16 (Against Defendants CITY and DOES 6-10)

17 58. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
 18 through 57 of this Complaint with the same force and effect as if fully set forth
 19 herein.

20 59. The OFFICER DEFENDANTS acted under color of law.

21 60. The acts of the OFFICER DEFENDANTS deprived DECEDENT and
 22 Plaintiffs of their particular rights under the United States Constitution.

23 61. Upon information and belief, a final policymaker, acting under color of
 24 law, who had final policymaking authority concerning the acts of the OFFICER
 25 DEFENDANTS, ratified (or will ratify) the acts of the OFFICER DEFENDANTS
 26 and the bases for them. Upon information and belief, the final policymaker knew of
 27 and specifically approved of (or will specifically approve of) the OFFICER
 28 DEFENDANTS' acts.

63. On information and belief, Defendants THE OFFICER
DEFENDANTS were not disciplined, reprimanded, retrained, suspended, or
otherwise penalized in connection with DECEDENT's death.

65. Accordingly, Defendants CITY and DOES 6-10 each are liable to
Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

SIXTH CLAIM FOR RELIEF

(Against Defendants CITY and DOES 6-10)

68. The OFFICER DEFENDANTS acted under color of law.

70. The training policies of Defendant CITY were not adequate to train its police officers to handle the usual and recurring situations with which they must deal, including with regard to the use of force and positional and restraint asphyxia.

71. Defendant CITY was deliberately indifferent to the obvious consequences of its failure to train its police officers adequately, including with regard to positional and restraint asphyxia.

72. The failure of Defendant CITY to provide adequate training caused the deprivation of Plaintiffs' rights by the OFFICER DEFENDANTS; that is, the defendants' failure to train is so closely related to the deprivation of DECEDENT and Plaintiffs' rights as to be the moving force that caused the ultimate injury.

73. By reason of the aforementioned acts and omissions, Plaintiffs have suffered loss of the love, companionship, affection, comfort, care, society, training, guidance, and past and future support of DECEDENT. The aforementioned acts and omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life, and death.

74. Accordingly, Defendants CITY and DOES 6-10 each are liable to Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

75. Plaintiffs bring this claim as successors in interest to DECEDENT, and seek both survival and wrongful death damages under this claim. Plaintiffs also seek attorney's fees under this claim.

SEVENTH CLAIM FOR RELIEF

Municipal Liability – Unconstitutional Custom or Policy (42 U.S.C. § 1983)

(Against Defendants CITY and DOES 6-10)

76. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 75 of this Complaint with the same force and effect as if fully set forth herein.

77. The OFFICER DEFENDANTS acted under color of law.

78. The OFFICER DEFENDANTS acted pursuant either to an expressly adopted official policy or a longstanding practice or custom of Defendant CITY.

1 79. On information and belief, the OFFICER DEFENDANTS were not
2 disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection
3 with DECEDENT's death.

4 80. Defendants CITY and the OFFICER DEFENDANTS, together with
5 other CITY policymakers and supervisors, maintained, inter alia, the following
6 unconstitutional customs, practices, and policies:

- 7 (a) Using excessive force, including excessive deadly force and
8 improperly restraining subjects that are being taken into custody;
- 9 (b) Providing inadequate training regarding the use of force,
10 including with regard to positional and restraint asphyxia;
- 11 (c) Employing and retaining as police officers individuals such as
12 the OFFICER DEFENDANTS, whom Defendant CITY at all
13 times material herein knew or reasonably should have known
14 had dangerous propensities for abusing their authority and for
15 using excessive force;
- 16 (d) Inadequately supervising, training (including with regard to
17 positional asphyxia and restraint asphyxia), controlling,
18 assigning, and disciplining CITY police officers, and other
19 personnel, including the OFFICER DEFENDANTS, whom
20 Defendant CITY knew or in the exercise of reasonable care
21 should have known had the aforementioned propensities and
22 character traits;
- 23 (e) Maintaining grossly inadequate procedures for reporting,
24 supervising, investigating, reviewing, disciplining and
25 controlling misconduct by CITY police officers;
- 26 (f) Failing to adequately discipline CITY police officers for the
27 above-referenced categories of misconduct, including "slaps on
28 the wrist," discipline that is so slight as to be out of proportion to

1 the magnitude of the misconduct, and other inadequate discipline
 2 that is tantamount to encouraging misconduct;

3 (g) Announcing that unjustified uses of force are “within policy,”
 4 including uses of force that were later determined in court to be
 5 unconstitutional;

6 (h) Even where uses of force are determined in court to be
 7 unconstitutional, refusing to discipline, terminate, or retrain the
 8 officers involved;

9 (i) Encouraging, accommodating, or facilitating a “blue code of
 10 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,”
 11 or simply “code of silence,” pursuant to which police officers do
 12 not report other officers’ errors, misconduct, or crimes. Pursuant
 13 to this code of silence, if questioned about an incident of
 14 misconduct involving another officer, while following the code,
 15 the officer being questioned will claim ignorance of the other
 16 officers’ wrongdoing; and

17 (j) Maintaining a policy of inaction and an attitude of indifference
 18 towards soaring numbers of police misconduct with regards to
 19 the use of force, including by failing to discipline, retrain,
 20 investigate, terminate, and recommend officers for criminal
 21 prosecution who participate in the use of force against unarmed
 22 people.

23 81. The aforementioned unconstitutional customs, practices, and policies,
 24 in addition to the ratification of the deficient customs, practices, and policies, are
 25 evidenced by the number of prior cases involving the use of deadly force against an
 26 unarmed person by a police officer working for the CITY.

27 82. By reason of the aforementioned acts and omissions, Plaintiffs have
 28 suffered loss of the love, companionship, affection, comfort, care, society, training,

1 guidance, and past and future support of DECEDENT. The aforementioned acts and
2 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
3 and death.

4 83. Defendants CITY and DOES 6-10, together with various other
5 officials, whether named or unnamed, had either actual or constructive knowledge
6 of the deficient policies, practices and customs alleged in the paragraphs above.
7 Despite having knowledge as stated above, these defendants condoned, tolerated and
8 through actions and inactions thereby ratified such policies. Said defendants also
9 acted with deliberate indifference to the foreseeable effects and consequences of
10 these policies with respect to the constitutional rights of DECEDENT, Plaintiffs,
11 and other individuals similarly situated.

12 84. By perpetrating, sanctioning, tolerating and ratifying the outrageous
13 conduct and other wrongful acts, DOES 6-10 acted with intentional, reckless, and
14 callous disregard for the life of DECEDENT and for DECEDENT's and Plaintiffs'
15 constitutional rights. Furthermore, the policies, practices, and customs implemented,
16 maintained, and still tolerated by Defendants CITY and DOES 6-10 were
17 affirmatively linked to and were a significantly influential force behind the injuries
18 of DECEDENT and Plaintiffs.

19 85. Accordingly, Defendants CITY and DOES 6-10 each are liable to
20 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

21 86. Plaintiffs bring this claim individually and as successors in interest to
22 DECEDENT, and seek both survival and wrongful death damages under this claim.
23 Plaintiffs also seek attorney's fees under this claim.

EIGHTH CLAIM FOR RELIEF

False Arrest/False Imprisonment

(Against Defendants CITY and the OFFICER DEFENDANTS)

87. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 86 of this Complaint with the same force and effect as if fully set forth herein.

88. The OFFICER DEFENDANTS, while working as police officers for the City of Ontario Police Department and acting within the course and scope of their duties, intentionally deprived DECEDENT of his freedom of movement by use of force, threats of force, menace, fraud, deceit, and unreasonable duress. The OFFICER DEFENDANTS detained DECEDENT without reasonable suspicion and arrested him without probable cause for an appreciable amount of time.

89. DECEDENT did not knowingly or voluntarily consent.

90. The conduct of the OFFICER DEFENDANTS was a substantial factor in causing the harm to DECEDENT.

91. Defendant CITY is vicariously liable for the wrongful acts of Defendants THE OFFICER DEFENDANTS pursuant to section 815.2(a) of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

92. Each of the OFFICER DEFENDANTS integrally participated or failed to intervene in the detention and arrest.

93. As a result of their misconduct, the OFFICER DEFENDANTS are liable for DECEDENT's injuries, either because they were integral participants in the detention and arrest, or because they failed to intervene to prevent it.

94. The conduct of the OFFICER DEFENDANTS was malicious, wanton, oppressive, and accomplished with a conscious disregard for the rights of DECEDENT, entitling Plaintiffs to an award of exemplary and punitive damages.

1 in the wrongful detention and arrest, or because they failed to intervene to prevent
2 these violations.

3 101. As a direct and proximate result of the conduct of the OFFICER
4 DEFENDANTS as alleged above, DECEDENT sustained injuries and died from his
5 injuries and also lost his earning capacity. As a direct and proximate result of the
6 conduct of the OFFICER DEFENDANTS as alleged above, DECEDENT suffered
7 survival damages.

8 102. The CITY is vicariously liable for the wrongful acts of the OFFICER
9 DEFENDANTS pursuant to section 815.2(a) of the California Government Code,
10 which provides that a public entity is liable for the injuries caused by its employees
11 within the scope of the employment if the employee's act would subject him or her
12 to liability.

13 103. The conduct of the OFFICER DEFENDANTS was malicious, wanton,
14 oppressive, and accomplished with a conscious disregard for the rights of Plaintiffs
15 and DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
16 DECEDENT, to an award of exemplary and punitive damages as to the OFFICER
17 DEFENDANTS.

18 104. Plaintiffs bring this claim individually and as successors in interest to
19 DECEDENT, and seek both survival and wrongful death damages under this claim.
20 Plaintiffs also seek attorney's fees under this claim.

21
22 **TENTH CLAIM FOR RELIEF**

23 **Negligence**

24 (Wrongful Death)

25 (Against all Defendants)

26 105. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
27 through 104 of this Complaint with the same force and effect as if fully set forth
28 herein.

1 106. Police Officers, including the OFFICER DEFENDANTS, have a duty
 2 to use reasonable care to prevent harm or injury to others. This duty includes using
 3 appropriate tactics, giving appropriate commands, giving warnings, and not using
 4 any force unless necessary, using less than lethal options, and only using deadly
 5 force as a last resort.

6 107. The OFFICER DEFENDANTS breached this duty of care. The
 7 actions and inactions of the OFFICER DEFENDANTS were negligent and reckless,
 8 including but not limited to:

- 9 (a) the failure to properly and adequately assess the need to detain,
 10 arrest, and use force or deadly force against DECEDENT;
- 11 (b) the negligent tactics and handling of the situation with
 12 DECEDENT, including with regard to their positioning and
 13 restraint of DECEDENT;
- 14 (c) the negligent detention, arrest, and use of force against
 15 DECEDENT;
- 16 (d) the failure to provide prompt medical care to DECEDENT;
- 17 (e) the failure to properly train and supervise employees, both
 18 professional and non-professional, including THE OFFICER
 19 DEFENDANTS, including with regard to positional asphyxia
 20 and restraint asphyxia;
- 21 (f) the failure to ensure that adequate numbers of employees with
 22 appropriate education and training were available to meet the
 23 needs of and protect the rights of DECEDENT;
- 24 (g) the negligent handling of evidence and witnesses; and
- 25 (h) the negligent communication of information during the incident.

26 108. As a direct and proximate result of Defendants' conduct as alleged
 27 above, and other undiscovered negligent conduct, DECEDENT was caused to suffer
 28 severe pain and suffering and ultimately died. Also as a direct and proximate result

1 of Defendants' conduct as alleged above, Plaintiffs suffered emotional distress and
 2 mental anguish. Plaintiffs also have been deprived of the life-long love,
 3 companionship, comfort, support, society, care and sustenance of DECEDENT, and
 4 will continue to be so deprived for the remainder of their natural lives.

5 109. The CITY is vicariously liable for the wrongful acts of DOES 6-10 and
 6 the OFFICER DEFENDANTS pursuant to section 815.2(a) of the California
 7 Government Code, which provides that a public entity is liable for the injuries
 8 caused by its employees within the scope of the employment if the employee's act
 9 would subject him or her to liability.

10 110. Plaintiffs seek wrongful death damages under this claim in their
 11 individual capacity. Plaintiffs also seek survival damages as successors-in-interest to
 12 DECEDENT. Plaintiffs also seek attorney's fees under this claim.

13 14 **ELEVENTH CLAIM FOR RELIEF**

15 **(Violation of Cal. Civil Code § 52.1)**

16 **(Against all Defendants)**

17 111. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
 18 through 110 of this Complaint with the same force and effect as if fully set forth
 19 herein.

20 112. California Civil Code, Section 52.1 (the Bane Act), prohibits any
 21 person from using violent acts or threatening to commit violent acts in retaliation
 22 against another person for exercising that person's constitutional rights.

23 113. On information and belief, the OFFICER DEFENDANTS, while
 24 working for the CITY and acting within the course and scope of their duties,
 25 intentionally committed and attempted to commit acts of violence against
 26 DECEDENT, including by pulling him from his vehicle, restraining him without
 27 justification or excuse, placing pressure on his back, integrally participating and
 28

1 failing to intervene in the above violence, and denying DECEDENT necessary
2 medical care.

3 114. When the OFFICER DEFENDANTS pulled DECEDENT from his
4 vehicle, restrained him, and placed pressure on DECEDENT's back, they interfered
5 with his freedom of speech and his civil rights to be free from unreasonable searches
6 and seizures, to due process, to equal protection of the laws, to medical care, to be
7 free from state actions that shock the conscience, and to life, liberty, and property.

8 115. On information and belief, Defendants intentionally and spitefully
9 committed the above acts to discourage DECEDENT from exercising his civil
10 rights, to retaliate against him for invoking such rights, or to prevent him from
11 exercising such rights, which he was fully entitled to enjoy.

12 116. On information and belief, DECEDENT reasonably believed and
13 understood that the violent acts committed by the OFFICER DEFENDANTS were
14 intended to discourage him from exercising the above civil rights, to retaliate against
15 him for invoking such rights, or to prevent him from exercising such rights.

16 117. Defendants successfully interfered with the above civil rights of
17 DECEDENT and Plaintiffs.

18 118. The conduct of the OFFICER DEFENDANTS was a substantial factor
19 in causing Plaintiffs' harms, losses, injuries, and damages.

20 119. The CITY is vicariously liable for the wrongful acts of the OFFICER
21 DEFENDANTS pursuant to section 815.2(a) of the California Government Code,
22 which provides that a public entity is liable for the injuries caused by its employees
23 within the scope of the employment if the employee's act would subject him or her
24 to liability.

25 120. Defendants DOES 6-10 are vicariously liable under California law and
26 the doctrine of *respondeat superior*.

27 121. The conduct of Defendants was malicious, wanton, oppressive, and
28 accomplished with a conscious disregard for DECEDENT's and Plaintiffs' rights,

1 justifying an award of exemplary and punitive damages as to the OFFICER
2 DEFENDANTS.

3 122. Plaintiffs seek wrongful death damages under this claim in their
4 individual capacities. Plaintiffs also seek survival damages as successors-in-interest
5 to DECEDENT. Plaintiffs also seek attorney's fees under this claim.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Cynthia Briones and Maurice Briones request entry of judgment in their favor and against Defendants CITY of Ontario, Stafford Cross, Mike Gonzalez, Michael Mora, Darryl Brown, Kyle Morgan and DOES 6-10, inclusive, as follows:

- A. For compensatory damages, including both survival damages and wrongful death damages under federal and state law, in the amount to be proven at trial;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable attorneys' fees, including litigation expenses;
- F. For costs of suit; and
- G. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: August 28, 2017

LAW OFFICES OF DALE K. GALIPO
GEORGE M. ROSENBERG

By /s/ Dale K. Galipo

Dale K. Galipo
Renee V. Masongsong
George M. Rosenberg
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: August 28, 2017

LAW OFFICES OF DALE K. GALIPO
GEORGE M. ROSENBERG

Bv /s/ Dale K. Galipo
Dale K. Galipo
Renee V. Masongsong
George M. Rosenberg
Attorneys for Plaintiffs